

Office of Chief Counsel
Internal Revenue Service
memorandum

date: March 23, 2004

to: Xavier J. Guerrero
Senior Compliance Policy Analyst
SE:C:CP:RC:EGP

from: John J. McGreevy
Senior Advisor
CC:PA:APJP

subject:

[REDACTED] DP
[REDACTED] Specifically, you ask whether there is
authority under section 6107 and/or section 7601 of the Internal Revenue Code to visit
the preparers [REDACTED]
[REDACTED] DP

[REDACTED]

[REDACTED] DP

[REDACTED]

PMTA: 00651

[REDACTED]

[REDACTED]

DP

Law and Analysis

Section 6107(b) requires persons who are income tax return preparer with respect to any return or claim for refund to retain a completed copy of such return or claim, or retain, on a list, the name and taxpayer identification number of the taxpayer for whom such return or claim was prepared, and make such copy or list available for inspection upon request by the Secretary.

Section 6107(b) requires an income tax return preparer to make certain tax records available for inspection upon request by the Secretary. To "inspect" means to look over or view closely, implying a close proximity to the records being inspected. There is no prohibition against the IRS conducting an informal, on-site inspection of the records required by the preparer by section 6107(b). [REDACTED]

[REDACTED] As inspection of tax records is thus not the primary purpose of the visit to the preparer's business, we believe other sections of the Code provide more direct support.

Section 7601(a) states that the Secretary shall, to the extent deemed practicable, cause officers or employees of the Treasury Department to proceed from time to time, through each internal revenue district and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax.

Section 7601 provides legal authority for conducting visits to determine the preparer's potential liability for penalties because it gives the Service the authority to inquire after and concerning all persons therein who may be liable to pay any internal revenue tax. Under section 6671(a), the return preparer penalties of sections 6694 and 6695 are included in any reference to "tax" in the Code, except as otherwise provided. Because of the preparer's potential liability, we believe that visits to discuss the preparer's behavior are authorized by section 7601.

We also considered the possible application of section 7602(c)(1). That section states that an officer or employee of the Internal Revenue Service may not contact any person

other than the taxpayer with respect to the determination or collection of the tax liability of such taxpayer without providing reasonable notice in advance to the taxpayer that contact may be made.

Paragraphs (b)(3) and (b)(4) of section 301.7602-2 provide that notice is required if the contact is "with respect to the determination or collection of the tax liability of the taxpayers," and the identity of the taxpayer is disclosed. Disclosure is made if the person being contacted can readily ascertain the identity of the taxpayer. See section 301.7602-2(c)(4)(i).

Section 301.7602-2(c)(3)(i)(A) states that a contact is "with respect to" the determination or collection of the tax liability of a taxpayer when made for the purpose of either determining or collecting a particular tax and when directly connected to that purpose. Section 301.7602-2(c)(3)(i)(B) provides that a contact is with respect to the "determination or collection" of the tax liability of a taxpayer when made during the administrative determination or collection process. For this purpose the administrative determination or collection process may include any administrative action to ascertain the correctness of a return, make a return where none has been filed, or determine or collect the liability of a transferee.

Section 301.7602-2(c)(3)(ii), *Example 1*, describes a compliance check on a preparer to review the client files to ensure that the proper forms and records have been created and maintained. The example states that this is not a contact with respect to the determination of the clients' liability even though the agent may obtain information that leads to a recommendation that one of the clients be examined.



DP

[REDACTED]

DP